IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 4503 of 2007(J)

CMA.1/2007 of SUB COURT, PALA
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PETITIONERS:
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1. **GEORGE, AGED 48 YEARS,**
   S/O.KURIACHAN, MANNATHUMAKKYIL HOUSE,
   KADAPLAMATTOM, ELACKAD, MEENACHIL.

2. **M.U.MAHTHEW, AGED 68 YEARS,**
   S/O.UTHUPPAN, MANNATHUMAKKYIL HOUSE,
   KADAPLAMATTOM, ELACKAD, MEENACHIL.

3. **SHAJI JOSEPH, AGED 40 YEARS,**
   S/O.JOSEPH, AMNNATHUMAKKYIL HOUSE,
   KADAPLAMATTOM, ELACKAD, MEENACHIL.

4. **M.K.THOMAS, AGED 55 YEARS,**
   S/O.KURIACHAN, MANNATHUMAKKYIL HOUSE,
   KADAPLAMATTOM, ELACKAD, MEENACHIL.

5. **JAMES MATHEW, AGED 36 YEARS,**
   S/O.M.U.MATHEW, MANNATHUMAKKYIL HOUSE,
   KADAPLAMATTOM, ELACKAD, MEENACHIL.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:
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1. **CHACKO KURIAN, AGED 43 YEARS,**
   S/O.KURIACHAN, MANNATHUMAKKYIL HOUSE,
   KADAPLAMATTOM, ANDOOR, ELACKAD, MEENACHIL.

2. **THOMAS LUKA, AGED 78 YEARS,**
   S/O.LUKA, VALIYAVALIYAMKULATHIL,
   KADAPLAMATTOM, P.O.ANDOOR, ELACKAD, MEENACHIL.

BY ADV. SRI.P.C.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF PLAINT IN O.S. 290/06 OF MUNSIFF COURT, PALA.

EXT.P2 TRUE COPY OF COMMISSIONER REPORT DATED 1.11.06 SUBMITTED BY ADVOCATE S. RAJESH.

EXT.P3 TRUE COPY OF THE SKETCH PREPARED BY HE ADVOCATE COMMISSIONER.

EXT.P4 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT AS DEFENDANTS IN O.S. 290/06 OF MUNSIFF COURT, PALA.

EXT.P5 TRUE COPY RESOLUTION NO.4 DATED 13.11.06 OF THE KADAPLAMATTOM GRAMA PANCHAYAT.

EXT.P6 TRUE COPY OF THE ORDER IN I.A.2046/06 IN O.S. 290/06 BY THE MUNSIFF'S COURT, PALA DATED 18.11.06.

EXT.P7 TRUE COPY OF JUDGMENT IN WPC 30907/06 DATED 22.11.06.

EXT.P8 TRUE COPY JUDGMENT IN WPC 14007/05 WHICH IS DISPOSED OF ALONG WITH WPC 11545/06 BY COMMON JUDGMENT DATED 15.6.06.

EXT.P9 TRUE COPY OF THE ORDER IN CMA 1/2007 OF SUB COURT, PALA DATED 25.1.07.

[True copy]

P.A. to Judge.

M.N.KRISHNAN, J

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W.P.(C) No.4503 OF 2007

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Dated this the 30th day of May, 2007

JUDGMENT

This writ petition is preferred challenging Ext.P9 order passed in C.M.A.No.1 of 2007 of the Sub Court, Pala. As per the order, the learned Sub Judge has remanded the matter to the trial court for consideration of the interim application afresh by giving opportunity to the parties to produce additional documents as well as to take out a fresh commission with the assistance of experts. It also ordered that defendants who are conducting blasting operation in the plaint schedule property shall do so only in consonance with Ext.A3 license and Ext.A5 permit till the disposal of the I.A. by the lower court.

2. Heard counsel for both sides. Learned counsel for the petitioners submits that he has no objection in the matter being pursued by the trial court and he is not seriously challenging the order of remand. He thrusts upon the point that permission granted to the defendants for blasting operation as per Exts.A3 and A5 permit shall have to be varied and there may be a direction to the trial court to dispose of the interim application

itself as expeditiously as possible.

3. On the other hand, learned counsel for defendants would contend that if there is a valid permit and license, his clients may be permitted to blast the rocks in accordance with the terms and conditions of the license and permit. It has come out in evidence that the period of Ext.A3 license and Ext.A5 permit have expired, it is submitted that Ext.A3 license is renewed upto 2009 and Ext.A5 permit has expired and a petition for renewal of permit is pending before the concerned authority. It is desirable that the matter be heard and disposed of by the trial court at the earliest and the learned counsel for the writ petitioner submits before me that he has no intention at all to file an application for issuance of a Commission with the assistance of an expert to note down the materials available except the present Commissioner's report. This is recorded.

In the interest of justice, the Munsiff's Court is directed to dispose of the interim application within 30 days from today. Till that time defendants are prevented from carrying on the quarrying or blasting operation in the property. In any event the Munsiff is not able to dispose of the interim application within 30 days defendants are at liberty to move that court for an interim order regarding blasting and mining.

Parties are directed to appear before the trial court on 11.6.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-